

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804  
PRESCRIPTION OPIATE :  
LITIGATION : Case No. 17-md-2804  
:  
APPLIES TO ALL CASES : Hon. Dan A. Polster  
:  
:

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

- - - -

JANUARY 22, 2019

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VIDEOTAPED DEPOSITION OF WALTER WAYNE DURR,  
taken pursuant to notice, was held at Marcus &  
Shapira, One Oxford Center, 35th Floor, Pittsburgh,  
Pennsylvania 15219, by and before Ann Medis,  
Registered Professional Reporter and Notary Public in  
and for the Commonwealth of Pennsylvania, on Tuesday,  
January 22, 2019, commencing at 8:57 a.m.

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GOLKOW LITIGATION SERVICES  
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1 subject is Pharmacy Controllable Substance  
2 Location.

3 Was that an email sent to you back in July of  
4 2009?

5 A. Yes.

6 Q. And was this during the timeframe when  
7 you, Mr. Carlson and others were getting prepared  
8 for HBC to become a distributor of controlled  
9 substances?

10 A. Yes.

11 Q. And if you could, just tell me who was  
12 Joseph Hurley.

13 A. Joseph Hurley, at that time, I believe  
14 he was the vice president of distribution. He's  
15 currently our senior vice president of  
16 distribution and logistics.

17 Q. How about Andy Zelaski?

18 A. Andy Zelaski was a manager who reported  
19 to me and was the manager that I put in charge of  
20 the pharmacy area.

21 Q. And then I think we know who Mr. Carlson  
22 is.

23 How about the -- it looks like there's three  
24 individuals who were copied. If you could, just  
25 tell me who those three individuals are.

1 facility to comply with the Controlled Substances  
2 Act?

3 MR. BARNES: Object to form.

4 THE WITNESS: I'll say no. We would  
5 have a hand in devising or working with Greg and  
6 his group on making sure or ensuring that we were  
7 following the proper process and procedures.

8 BY MR. HUDSON:

9 Q. Well, that's what I'm trying to  
10 understand. You've testified that from a  
11 compliance perspective, it was a joint effort  
12 between the facility and Mr. Carlson's group.

13 And I guess what I'm trying to figure out is  
14 within that joint responsibility, were there  
15 certain responsibilities that fell on the facility  
16 versus Mr. Carlson's group?

17 How do I figure out who was responsible for  
18 what?

19 A. Yes. So an example would be cameras and  
20 the loss prevention piece that fell to Andy  
21 Zelaski and myself, primarily Andy, and working in  
22 connection with the DEA on what are either best  
23 practices or what was regulatory and needed.

24 Again, that was just an example.

25 Q. Sure. And if you could, just walk

1 through what you believed to be the obligations  
2 that arose in 2009 when that facility became a  
3 distributor of controlled substances.

4 And just, if you could, describe what you  
5 recall about the steps taken by your team or  
6 Mr. Carlson's team to put policies, procedures or  
7 things in place to comply with the Controlled  
8 Substances Act.

9 A. So we had -- we knew to bring in  
10 controlled substances, we had to have a specific  
11 area. And it had to meet DEA requirements of the  
12 gauge of steel in the wire for the cage, whether  
13 there was a roof on it or not, or ceiling I guess  
14 I should say. It had to be bolted down to the  
15 floor. We had to ensure that the seams were  
16 tack-welded and not just bolted.

17 And our Sonitrol system, we had to work with  
18 our loss prevention to set that up, ensuring that  
19 background checks were covered, drug and alcohol  
20 screens were covered.

21 Those are all the things that -- again,  
22 working jointly with Greg Carlson and the DEA to  
23 get that information to know what direction we  
24 should go to properly set up this facility.

25 Q. Did you personally have any

1 communications or discussions with the DEA at this  
2 time in 2009 when the facility was being set up?

3 A. I would have.

4 Q. And who did you speak with at the DEA?

5 A. I don't fully remember his last name.  
6 His first name was Lou. I think it started with a

7 C. It's been quite a few years since.

8 Q. Sure. No, I understand. And I'm just  
9 trying to get your best testimony on the record.

10 How many times would you say you spoke to  
11 Lou C at the DEA or of the DEA?

12 A. I would say leading up to opening or  
13 starting the operation, maybe two times, maybe  
14 three. I can't speak for how many times he may  
15 have spoke with anyone in corporate.

16 Q. Were those discussions focused on the  
17 security requirements, making sure that the  
18 facility was meeting the DEA security  
19 requirements?

20 A. Yes.

21 Q. Do you know if you reached out to him or  
22 if he reached out to you?

23 A. I can't. I don't remember.

24 Q. Anything else you can think of that the  
25 HBC warehouse did as part of its process of

1 becoming a distributor of controlled substances?

2 A. Not top of mind, no.

3 Q. Is it fair to say that the measures or  
4 the steps or the plan that you implemented for the  
5 warehouse were focused on the security  
6 requirements of the Controlled Substances Act?

7 A. It was one of our focuses.

8 Q. Well, so far you've talked about  
9 security cameras being installed; right?

10 A. Yes.

11 Q. And then you talked about creating a  
12 specific area in the warehouse for controlled  
13 substances that was enclosed with steel and bolted  
14 down to make sure that it was a secured area;  
15 right?

16 A. Yes.

17 Q. And then you talked about background  
18 checks for employees who would be dealing with the  
19 controlled substances; right?

20 A. Yes.

21 Q. So can we agree that all of those were  
22 steps taken to address either security or theft  
23 controls -- I'm sorry -- security or theft  
24 concerns?

25 A. Yes.

1           Q.   Anything else you can think of -- I just  
2   want to make sure that I've exhausted this  
3   topic -- that either your group or Mr. Carlson's  
4   group did to prepare the warehouse to become a  
5   distributor of controlled substances?

6           A.   One is, as stated in one of the  
7   exhibits, was just inventory controls.

8           Q.   And tell me what steps HBC did to  
9   address inventory controls.

10          A.   Well, we implemented a more robust  
11   counting system than we had out in, I'll say, the  
12   general HBC warehouse.

13          Example, and I don't know that I'll get the  
14   numbers exactly right, but for the narcotics cage  
15   as we refer to it, we would count that prior to  
16   anybody selecting every day. We would count it  
17   after -- as the team members were leaving to go to  
18   break, the selectors.

19          We would count it before each route left.  
20   And then that was for the pick slots. And then we  
21   would count the reserves once a month unless we  
22   saw any discrepancies in our pick location.

23          Q.   So the inventory controls that were put  
24   in place involved more rigorous and more regular  
25   counting of the inventory to make sure that the



1 inventory that was supposed to be there was, in  
2 fact, there?

3 A. Yes.

4 Q. Anything else that you can think of in  
5 terms of controls or steps taken at the HBC  
6 warehouse to become a distributor of controlled  
7 substances?

8 A. As we talked, our security, we had a fob  
9 system around the entire building. Like we had a  
10 specific fob system, Sonitrol system.

11 We regulated who had access to the room  
12 itself. And then we had even more limited access  
13 to the narcotics cage itself along with locks, and  
14 the cage itself had its own sensors and alarm  
15 system specific to the cage.

16 Q. Anything else you can think of?

17 A. Not at this time.

18 Q. I'm going to switch gears a little bit  
19 and hand you what I've marked as Exhibits 3 and 4.

20 (HBC-Durr Exhibits 3 - 4 were marked.)

21 BY MR. HUDSON:

22 Q. Mr. Durr, I'll represent to you that  
23 Exhibit 3 is some responses to questions that the  
24 plaintiffs asked HBC.

25 And I'm going to turn to page 8 of these

1           A.    I'm not aware of any from the corporate.  
2           That doesn't mean there weren't any. I'm just not  
3           aware of them.

4           Q.    Would it be fair to say then that  
5           between 2009 and 2016, there was no coordination  
6           between yourself and the Giant Eagle corporate  
7           office in terms of using Giant Eagle systems to  
8           monitor suspicious orders of controlled  
9           substances?

10          A.    That would not be fair. We -- "we"  
11          being my team, Andy Zelaski and Christy Hart --  
12          had daily communications with the corporate team  
13          via phone and/or through our systems monitoring  
14          inventory and communicating inbound/outbound  
15          shipments.

16          So we believe we had a system in place.

17          Q.    Yourself, Mr. Zelaski and Erin Hart?

18          A.    Christy Hart.

19          Q.    I'm sorry. Christy Hart.

20          Was there anyone else at the HBC facility who  
21          was involved in communicating with the compliance  
22          group?

23          A.    Those were the primaries. On a day off  
24          we had a backup for Christy. It was typically  
25          Dominique McFann. But Christy and Andy were the

1 primaries.

2 Q. And when did these communications begin?

3 A. From the moment we opened operations.

4 Q. From the moment that you began acting as  
5 a distributor of controlled substances?

6 A. Yes.

7 Q. So from November of 2009 until the  
8 present?

9 A. I would say probably even before that,  
10 as you've seen, as we were setting up to go into  
11 distribution.

12 Q. And I guess what I'm focused on is  
13 suspicious order monitoring of controlled  
14 substances shipments that were going in and out of  
15 the warehouse.

16 Is that your understanding of suspicious  
17 order monitoring?

18 A. Yes.

19 Q. We've looked at -- if we go back to  
20 Exhibits 5 and 6 -- well, actually, and Exhibit 4  
21 as well, can we agree that HBC did not have any  
22 written policies or procedures in effect at least  
23 prior to August 1, 2014?

24 A. No. We can't agree on that.

25 Q. Are you aware of written policies or

1 procedures that existed prior to August 1, 2014  
2 relating to monitoring of suspicious orders of  
3 controlled substances?

4 A. I would say we had a system in place as  
5 it related to suspicious order monitoring.

6 Q. Okay. And my question though is more  
7 specific. And we'll get there, and I'll ask you  
8 more questions about what that program or system  
9 looked like.

10 I guess what I'm focused on right now are  
11 just written policies or procedures. Okay?

12 A. I believe we had those policies. Where  
13 they are or what happened to them through time, I  
14 can't answer that.

15 Q. You believe that the HBC warehouse had  
16 suspicious order monitoring policies or procedures  
17 that existed prior to August 1, 2014?

18 A. I can't say that we had a policy  
19 specifically as you're stating it, but I believe  
20 we had a system in place and processes and  
21 procedures.

22 Q. Did you have those in writing?

23 A. I would say that we did, but I don't  
24 have them.

25 Q. When were those policies or procedures

1 put into writing?

2 A. I would say in 2009, as we were working  
3 to set up the facility.

4 Q. So I asked you previously questions  
5 about all the steps that HBC took to prepare the  
6 warehouse to become a distributor of controlled  
7 substances.

8 Do you remember that?

9 A. I do.

10 Q. And I asked you, I think, three or four  
11 times because I wanted to try, as best I could, to  
12 get an exhaustive list.

13 You talked about securities and cameras. You  
14 talked about the fob that had limited access. You  
15 talked about controlling the specific area with a  
16 cage of steel that's bolted down. You talked  
17 about background checks. And you talked about  
18 inventory controls that were put in place to make  
19 the counting more robust and more regular at the  
20 facility, specifically for controlled substances.

21 Do you remember that testimony?

22 A. I do.

23 Q. And at that time, when I asked you those  
24 questions, you didn't identify suspicious order  
25 monitoring of controlled substances as one of the

1     Manhattan that we would use for cycle counting,  
2     inventory reconciliation, entering purchase  
3     orders, but they were all housed under the  
4     Manhattan.

5           Q.    Am I correct though that Manhattan did  
6     not have any functionality where the warehouse  
7     could set thresholds or quantities of suspicious  
8     orders of controlled substances using historical  
9     ordering patterns or things of that nature?

10          A.    Not to my knowledge, no.

11          Q.    So in terms of monitoring suspicious  
12     orders of controlled substances, is it fair to say  
13     that the HBC warehouse did not have any computer  
14     systems that were utilized on a systematic -- in a  
15     systematic way to monitor orders?

16          A.    No. I don't believe that's fair to say  
17     that. We could monitor orders. We knew exactly  
18     what was coming in from the stores. We also knew  
19     exactly what was coming in from the vendors. And  
20     there were checks and balances in place.

21                In addition, the corporate team had full  
22     visibility of our inventory at all times and could  
23     see if there was any fluctuation whatsoever.

24          Q.    So what I'm trying to separate out is  
25     corporate, because it's my understanding -- is it

1 suspect at the time within our walls. On a  
2 grander scale, I don't know that I can put the  
3 framework to that.

4 But if we at HBC saw anything I'll say out of  
5 the ordinary, our first communication is to the  
6 pharmacy group to understand what we're seeing.  
7 I'm not saying that we did, but...

8 Q. And that's, I guess, what I'm trying to  
9 get an idea of, is what would be -- what criteria  
10 would the warehouse apply under your system or  
11 program to try to figure out whether a shipment is  
12 out of the ordinary.

13 A. So we still see it today even outside of  
14 the pharmacy area.

15 Our team members in that specific area, the  
16 narcotics room, we were very limiting on who went  
17 in there. Typically, no more than two team  
18 members a night would be in that room, and most  
19 times we tried to keep it to one.

20 They would get attuned to the normalcies, if  
21 you will, of orders going in and out of that room,  
22 because they're picking the same items over and  
23 over again day in and day out.

24 So, for instance, if they see a store  
25 typically would get ten selling units of a

1 particular item, and now all of a sudden the store  
2 has 50 selling units going out, the team members  
3 would bring it to our attention, either Christy  
4 Hart or whoever the supervisor is. And our first  
5 call would be to the pharmacy, is this truly an  
6 order that was placed and are those quantities  
7 that you absolutely want?

8 Q. So tell me then how HBC is able to  
9 figure out that that particular store usually  
10 orders ten of that item, and now they're ordering  
11 50?

12 A. A lot of that is just -- I'll categorize  
13 it as empirical from the team members -- not from  
14 the data, but from the team members working so  
15 closely with those products and being in that same  
16 area on a regular basis.

17 Q. So there's not -- so the identifying the  
18 suspect orders or the orders that are not  
19 ordinary -- I think your words were out of the  
20 ordinary -- that would fall on the particular  
21 pickers that are working at the facility to fill  
22 the orders, and they'd be relying on their  
23 experience and knowledge from doing that day in  
24 and day out filling orders?

25 A. As a first line. I can't answer for



1 Exhibit 11?

2 A. To a small degree.

3 Q. Do you know -- assuming that any of  
4 these numbers are correct, and I'm qualifying  
5 that, but we're not sure -- what happened to these  
6 hydrocodone combination products shipped by HBC to  
7 the Giant Eagle pharmacies?

8 A. They would have gone into our  
9 pharmacies.

10 Q. And what happened to them after they  
11 went to the pharmacies?

12 A. They would have filled legal  
13 prescriptions.

14 Q. So, to your knowledge, were they  
15 diverted in any way?

16 A. Not to my knowledge.

17 Q. Do you know the difference between -- or  
18 do you know what the term diversion means?

19 A. I do.

20 Q. What does it mean to you?

21 A. I believe that something is being pulled  
22 in a different direction than its intended purpose  
23 or intended sale or use.

24 Q. You mentioned a couple of times in your  
25 testimony that HBC -- it's a single warehouse; is

1 that correct?

2 A. Yes.

3 Q. Located in Washington, PA?

4 A. Yes.

5 Q. Do you know what the size of that  
6 warehouse is?

7 A. 305,000 square feet.

8 Q. And of that 305,000 square feet, how  
9 much is dedicated to pharmacy operations?

10 A. There was 12,000 square feet and an  
11 additional 2,000 for a receiving area. So 14,000  
12 total.

13 Q. 14,000 for pharmacy?

14 A. Yes.

15 Q. Including all pharmaceutical products,  
16 even noncontrolled?

17 A. Yes.

18 Q. What portion of that 12,000 square feet  
19 were dedicated -- was the narc room, so-called  
20 narc room?

21 A. Maybe 2,000 square feet.

22 Q. Was the narc room partitioned off in  
23 some secure way from even the pharmacy room?

24 A. Yes.

25 Q. And was the pharmacy room partitioned

1 off from the rest of the warehouse?

2 A. Yes.

3 Q. And what was the rest of the warehouse,  
4 the other 292,000 square feet, what was that  
5 dedicated to?

6 A. That's health/beauty care items,  
7 cigarettes, tobacco, candy, mints.

8 Q. Okay.

9 A. General merchandise.

10 Q. And was all that product shipped to  
11 Giant Eagle grocery stores?

12 A. Yes.

13 Q. Did the HBC warehouse ship to any  
14 entities other than affiliated Giant Eagle grocery  
15 stores and Giant Eagle pharmacies?

16 A. Pharmacies, only Giant Eagle. For the  
17 grocery side, we did have some nonbanners and  
18 independent stores.

19 Q. Independent Giant Eagle stores?

20 A. Yes.

21 Q. All right. But for the pharmacy --

22 A. Giant Eagle only.

23 Q. -- was that Giant Eagle only?

24 A. Yes.

25 Q. And would that be to pharmacies

1 throughout the Giant Eagle regional chain?

2 A. Yes.

3 Q. Do you know approximately how many  
4 pharmacies are in the Giant Eagle regional chain?

5 A. I believe 200.

6 Q. About 200?

7 A. Yeah.

8 Q. Did Giant Eagle ever -- did the HBC  
9 warehouse ever supply any internet pharmacies?

10 A. No.

11 Q. Did the HBC pharmacy ever supply  
12 Schedule II opioids to any entity, including Giant  
13 Eagle?

14 A. No.

15 Q. Did the HBC warehouse -- with respect to  
16 the drugs at issue in this case, do you understand  
17 those to be Schedule II opioids?

18 A. Yes.

19 Q. And when Giant Eagle distributed --  
20 well, let me back up.

21 Giant Eagle never or the HBC warehouse never  
22 distributed Schedule II opioids; is that correct?

23 MR. HUDSON: Object to form.

24 THE WITNESS: No.

25

1 BY MR. BARNES:

2 Q. Did you understand hydrocodone  
3 combination products to be a Schedule III for a  
4 period of time before it was reclassified as a II?

5 A. Yes.

6 Q. And did the HBC warehouse, while it was  
7 a Schedule III, distribute hydrocodone combination  
8 products to Giant Eagle pharmacies only?

9 A. Yes.

10 Q. And when it was reclassified to a  
11 Schedule II, did HBC stop distributing that  
12 product?

13 A. Yes.

14 Q. Was that approximately in October of  
15 2014?

16 A. I believe so. Again, I was not there at  
17 that time.

18 Q. You talked a lot about the so-called  
19 inbound and outbound controls at the HBC  
20 warehouse. And I want to follow up a little bit  
21 on that.

22 By inbound, do you mean the purchasing into  
23 the warehouse?

24 A. Yes.

25 Q. Now, I want you to focus solely on

1 controlled substances.

2 Were you there when the cage system was set  
3 up at the HBC warehouse in 2009?

4 A. Yes.

5 Q. And did you have responsibilities in  
6 that role --

7 A. Yes.

8 Q. -- in getting ready to distribute  
9 Schedule III and IV and V controlled substances?

10 A. Yes.

11 Q. And you said that you had some  
12 interaction with DEA when doing that?

13 A. Correct.

14 Q. Does the name Lou Colissimo ring a bell  
15 to you?

16 A. It does.

17 Q. And who is he?

18 A. I believe he was the DEA inspector at  
19 the time.

20 Q. Was he from the regional DEA Pittsburgh  
21 office?

22 A. I believe so, yes.

23 Q. And did he come out to the facility to  
24 assist with setting up the facility for the  
25 distribution of Schedule III, VI, and V controlled

1 substances?

2 A. Yes.

3 Q. Did he assist with providing DEA input  
4 as to what the DEA wanted the warehouse to do in  
5 order to get a registration and license to  
6 distribute Schedule III, IV, and Vs?

7 A. Yes.

8 Q. And did that involve -- first, I'll  
9 break it down -- the physical plant itself, what  
10 the DEA wanted and required to distribute IIIs,  
11 IVs, and Vs?

12 A. Yes.

13 Q. And did you meet all those requirements  
14 with Agent Colissimo?

15 A. We did.

16 Q. Did he or his team inspect the facility  
17 before, during, and after construction?

18 A. Yes.

19 Q. Did they approve the facility in those  
20 inspections?

21 A. Yes.

22 Q. Now, beginning in 2009, when HBC first  
23 began distributing Schedule III, IV, and V  
24 controlled substances, you mentioned the so-called  
25 warehouse management system was called Manhattan?

1 A. Yes.

2 Q. How long had that -- that was a  
3 computerized system?

4 A. It was and is.

5 Q. And how long had that computerized  
6 system been in effect at the warehouse in 2009?

7 A. 2005, we brought that onboard.

8 Q. And does that control the inventory at  
9 the warehouse from beginning to end?

10 A. Yes.

11 Q. And does it also interface with the  
12 Giant Eagle pharmacy ordering system?

13 A. It does.

14 Q. Does the Manhattan system inside the  
15 warehouse, does it involve the use of scanners?

16 A. Yes.

17 Q. And is that given to all of the pickers?

18 A. Yes, it is.

19 Q. And, again, I'm just talking about the  
20 pharmacy area.

21 The Vocollect system, is that at the  
22 warehouse itself?

23 A. Yes.

24 Q. Does that interface with Manhattan?

25 A. Correct.



1           Q.   And does the Vocollect system provide  
2   direction electronically to pickers for each order  
3   that has come in from the pharmacies?

4           A.   Yes.

5           Q.   And can you explain to us a little bit  
6   more in detail how the Vocollect system works.

7           A.   The orders come from the stores.  Again,  
8   they come through our system, routing first, and  
9   then into the Manhattan system.  They interface  
10   with Vocollect.

11           The team members are assigned a particular  
12   area in the building, pharmacy being one of those  
13   areas, and the narcotics cage being a specific  
14   area.

15           The team member would state that they were  
16   ready to work in a particular region.  Once they  
17   identify the region, they would also identify what  
18   printer they were going to work from.

19           From there, the system -- based on some  
20   controls, meaning everything in the building is  
21   weighed and measured so that we can properly cue  
22   the totes in the trailers, the team members would  
23   then be given a set of labels that are specific to  
24   what should go in that tote.

25           Q.   And what is a tote?  Is that a box of

1 some sort?

2 A. You could call that a plastic box, if  
3 you will, with a lid that folds in from both  
4 sides.

5 Q. Okay.

6 A. Once they identified the region, the  
7 printer, and get their set of labels, then we  
8 would dictate how many labels they would get so  
9 that we could maintain balance in selection. We  
10 didn't want a particular selector stuck on one  
11 store too long, potentially holding up routes.

12 Once that happened, the team member would  
13 then be directed to an aisle, a bay, a shelf, a  
14 slot. And then they would be told to pick the  
15 quantity that the pharmacy had ordered.

16 As they're picking the quantities, they had a  
17 wrist scanner, and they would pass the individual  
18 quantities in front of that wrist scanner.

19 Q. Do you mean the bar codes --

20 A. Yes. The bar code.

21 Q. -- of what was being picked?

22 A. The bar code of what's being picked.

23 And as they would do that, they would place  
24 it in the tote.

25 And then as they were finished, before they

1 would get their next order to pick, they would  
2 have to scan or call in a check digit of that slot  
3 to confirm they were in the right slot.

4 Once they do that, then they would just -- it  
5 was redundant after that of selection process.

6 Q. So is the picking process through  
7 Manhattan and the Vocollect system highly  
8 computerized and monitored continually throughout  
9 the day?

10 A. Yes.

11 Q. And does the system specifically tell  
12 each picker where exactly -- you said the aisle,  
13 the shelf, and the slot -- they're supposed to go  
14 to make the pick?

15 A. Yes.

16 Q. And as they physically make the pick, it  
17 scans right into the system?

18 A. Yeah. The team members pushing --  
19 pulling it past a scanner.

20 Q. They scan the bar code on their scanner?

21 A. Correct.

22 Q. So then the system knows that it's in a  
23 specific tote at that time?

24 A. Correct.

25 Q. And what happens to -- when the picker

1 is done picking in the narcotics room, what does  
2 he do then?

3 A. So the team members not in the narcotics  
4 room would take their tote -- and there was an  
5 opening with a conveyor going into the narcotics  
6 cage -- they would put their tote on there. It  
7 would go into the narcotics room. And then the  
8 narcotics selector would pick their portion of  
9 that order and place it in the tote.

10 Q. I see. So not all the pickers in the  
11 warehouse were allowed in the narcotics room?

12 A. Correct.

13 Q. And you said only one or two at a time?

14 A. Yes.

15 Q. And once that picking was done in the  
16 narcotics room, what happened -- and it was put  
17 into the tote -- what happened to the tote?

18 A. So once the selection is done and we  
19 believe that we are ready to put that on the  
20 trailer for shipment, our system has a process  
21 where we have to scan every single individual  
22 tote.

23 If you for some reason would miss a tote or  
24 something was unaccounted for, the system would  
25 not allow you to do what's called close load. It

1 then forces you down to a specific tote ID to  
2 answer why or where that tote might be.

3 Q. So did you need to close the load before  
4 you shipped?

5 A. Yes.

6 Q. And once it was ready for -- the load  
7 was closed and was ready for shipment, what  
8 happened to the tote?

9 And I guess it was on a pallet of some sort?

10 A. There would be pallets -- they were  
11 already palletized. The pallet would be  
12 shrinkwrapped and then loaded onto the trailer.

13 Q. And the trailers, who handled the --  
14 whose trailers were they?

15 A. They were Talon Logistic or Giant Eagle  
16 trailers.

17 Q. Did you ever do any shipping with  
18 McKesson?

19 A. McKesson -- we would deliver to  
20 McKesson, and then McKesson would deliver out to  
21 the pharmacies from there.

22 Q. Okay. So that's outgoing inventory.

23 In the process you described, the so-called  
24 Manhattan system, through the use of bar codes and  
25 scanners, would know every step of the picking

1 process all the way up to the close load and is  
2 ready for shipment?

3 A. Yes.

4 Q. And if there were any discrepancies in  
5 that, you couldn't ship?

6 A. Yeah. We wouldn't ship.

7 Q. Now, how about on the inbound side; who  
8 determines what's coming into the warehouse?

9 A. At that time that would have been Greg  
10 Carlson's group.

11 Q. At corporate?

12 A. At corporate.

13 Q. And did they manage incoming inventory?

14 A. Yes.

15 Q. Corporate?

16 How would the warehouse know what to expect?  
17 Trucks just show up or would you be told by  
18 corporate that expect --

19 A. It would be scheduled through the  
20 system. We would know that a vendor or, excuse  
21 me, a carrier was coming, and on that particular  
22 carrier would be a specific vendor.

23 Q. By the way, what type of physical  
24 barriers or controls did you have for outgoing or  
25 incoming shipments of narcotics?

1           A.    We had several.  We have the cage  
2           itself.  Outside of the cage, we had numerous  
3           cameras.  I believe we had probably 30 or 40  
4           cameras within that small confine.

5           Q.    30 or 40 cameras --

6           A.    Yes.

7           Q.    -- for the pharmacy room itself?

8           A.    Yes.

9           Q.    How about inside the narc room?

10          A.    I believe we at least had anywhere from  
11          eight to 12 different angles looking at it, or  
12          beaming into it, or an overlap.

13          Q.    And was that to guard against theft and  
14          diversion?

15          A.    Correct.

16          Q.    All right.  And so once it was  
17          palletized and ready for shipment, did it just sit  
18          in the warehouse next to a crate of oranges?

19          A.    No.  We had two areas that -- it would  
20          remain in the pharmacy room or it would be  
21          monitored as it was being loaded.

22                Once it was loaded, the door was shut and  
23          sealed, and those sealed numbers would be  
24          communicated or written down on the outgoing  
25          paperwork.

1           Q.    You mean shut and sealed inside the  
2 tractor-trailer?

3           A.    Correct.  In the trailer at -- while it  
4 was stationed in our door.  And from there, it was  
5 leaving.

6           Q.    Were there any precautions taken to  
7 avoid people being able to slip in alongside the  
8 trailer or under the trailer?

9           A.    Yes.  On a standard trailer in our door  
10 50 and 51, they butted up very tightly against the  
11 building itself.  And they were at the height  
12 where there were no gaps around that.

13           If we had an inbound UPS/Fedex load coming  
14 in, those are box trucks that are at a lower  
15 level, and they can't use those normal dock.  So  
16 what we had there was -- we had bollards, steel  
17 bollards that were drilled into the ground.  We  
18 had a steel plate welded onto those bollards so  
19 that no one could slide up under the truck or  
20 right into the building.

21           We also had created a cage where, when the  
22 UPS driver or Fedex driver would come, they would  
23 pull those cages to the sides of the vehicle.  
24 Again, to deter anyone from having quick or easy  
25 access into the building.



1           If the driver was not delivering something  
2           through that door and they had maybe one or two  
3           cases and they were delivering them, first they  
4           would have to ring a buzzer.

5           We had a camera right there so we could see  
6           who was out there and if anybody was around or  
7           near them, then make a determination if we were  
8           going to let them into the building.

9           If we were going to let them into the  
10          building, we then had a secondary cage, if you  
11          will, at the door. That was locked at all times  
12          and monitored. Then we would let them into there,  
13          and then decide whether we were just going to  
14          transact with them in the cage or let them into  
15          the room itself.

16          Q.    This is all related to narcotics  
17          transactions?

18          A.    This related to any of the pharmacy  
19          items. Again, the narcotics would have been in  
20          the cage separate of that.

21          Q.    Okay.

22          A.    So they weren't coming directly into  
23          that narcotics cage.

24          Q.    All of these physical controls, were  
25          these something that Agent Colissimo from the DEA

1 had asked HBC to install, or did this include some  
2 of his recommendations and then --

3 MR. HUDSON: Object to form.

4 THE WITNESS: I would say they included.

5 BY MR. BARNES:

6 Q. And was he aware during his inspections,  
7 before you began distributing controlled  
8 substances, about all these safety precautions?

9 A. Yes.

10 Q. Would the warehouse get copies of the  
11 purchase orders issued by the buyers or the  
12 category managers at corporate?

13 A. Yes. We had the ability to print those  
14 in-house.

15 Q. And so if a truck pulled up, you would  
16 be able to pull the purchase order?

17 A. Yes.

18 Q. And were there controls to match what  
19 was being delivered to the purchase order?

20 A. Yes. Absolutely.

21 So we had a confined area where we would do  
22 the pharmacy receiving, whether it be narcotic or  
23 otherwise.

24 If it was a temperature-sensitive item, then  
25 we would bring it all the way into the room. If

1 shift?

2 A. As I stated, when the team members would  
3 go on their breaks, the support staff would stay  
4 and remain back and do a count.

5 When the selection was done for that route,  
6 we'd go in and count the cage again.

7 Q. Oh, at every break and at every  
8 shipment?

9 A. Yes.

10 Q. And then at the end of the day?

11 A. Correct.

12 Q. So how many times, for example, would  
13 Vicodin get counted in the specific slot and shelf  
14 that it was on in the warehouse in any given day?

15 A. In a number of routes, anywhere from  
16 like four to six times.

17 Q. Why were you doing all that cycle  
18 counting?

19 A. We wanted to ensure the integrity of  
20 our -- of our inventory. But also it gives you an  
21 opportunity to catch anything that may be -- that  
22 may be amiss.

23 Q. Would it give you an opportunity to spot  
24 theft and diversion?

25 A. It would.

1 MR. HUDSON: Object to the form.

2 BY MR. BARNES:

3 Q. And was the Manhattan system the  
4 computerized system that was monitoring every step  
5 of this inbound and outbound process at the  
6 warehouse?

7 MR. HUDSON: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. BARNES:

10 Q. Did the DEA come in from time to time  
11 and look at the warehouse system and check  
12 inventory and ask for records?

13 A. Yes, they did.

14 Q. How often did that happen?

15 A. At least annually.

16 Q. At least annually.

17 And what would they typically ask for when  
18 they came in?

19 A. They almost always -- I would say they  
20 always went to the narcotics cage. They would  
21 show up unannounced, introduce themselves, state  
22 the nature of their business.

23 And they would -- I don't know whether they  
24 randomly or how they decided on their list, but  
25 they would show us or tell us which items they

1 wanted to do counts on. And they would also tell  
2 us what dates they want to see our records from.

3 Q. So would they take, for example -- I'll  
4 use Vicodin again. They'll say, we want all your  
5 records on Vicodin for, what, a month or two-month  
6 or three-month period of time?

7 A. Each scenario, they would give us a  
8 specific -- I believe a specific date or week in  
9 the past. Even they'd say, Show me your records  
10 from June of 2010.

11 Q. And would you give them the records?

12 A. We would.

13 Q. Did any of these unannounced inspections  
14 ever result in the DEA telling you that you're  
15 doing something wrong at the warehouse?

16 A. No, they did not.

17 Q. Did the DEA ever find any discrepancies  
18 with respect to the controlled substances that HBC  
19 was distributing?

20 A. No, they didn't.

21 Q. Were the pickers in the narc rooms, were  
22 they trained on the Manhattan system?

23 A. Yes.

24 Q. On how to use the scanners? How to  
25 pick? Things of that nature?

1 A. Yes.

2 Q. The headsets that they were wearing, was  
3 Manhattan instructing through the headsets?

4 A. Vocollect was instructing, yes.

5 Q. I'm sorry. Vocollect.

6 I mean, was there like a computerized voice  
7 of some sort?

8 A. Yes.

9 Q. If I was wearing one, it would say, go  
10 to aisle 3, bay 7, shelf 2, slot 7?

11 A. Yes.

12 Q. And then as I pick -- I'm a picker -- I  
13 go to that slot, and I brush the bar code past my  
14 wrist scanner?

15 A. Correct.

16 Q. And Manhattan then knows I did what I  
17 was just told to do?

18 A. Correct.

19 Q. And does Manhattan then track the  
20 inventory as it's being loaded into totes and then  
21 all the way out the door?

22 A. Yes.

23 Q. You talked about the narcotics room  
24 pickers.

25 Over time, would they become familiar with

1       outdated products.

2               Were these policies things that were followed  
3 by HBC from 2009 going forward?

4               A.     Yes.

5               Q.     The next policy on page 636 is a damaged  
6 and return product policy.

7               Was this a memorialization of a preexisting  
8 policy that went all the way back to 2009?

9               A.     Yes.

10              Q.     And what is the purpose of this type of  
11 policy? What is its function?

12              A.     To ensure that any damaged or returned  
13 products were being handled properly, and if they  
14 required a quarantine, that they were properly  
15 quarantined off.

16              Q.     Would this damaged or returned product  
17 be monitored by the Manhattan system?

18              A.     Yes. Just the fact that it says, "All  
19 damaged product must be removed from active  
20 inventory," you would have to go into Manhattan  
21 to remove that from active inventory.

22              Q.     Okay.

23              A.     So there would be a record of that.

24              Q.     The next policy is -- on page 638 is the  
25 suspicious order policy. Do you see that?

1 A. I do.

2 Q. It says, "Identified individuals from  
3 Giant Eagle sourcing, pharmacy compliance, and HBC  
4 team members must review pharmacy customer orders  
5 and order trends on a regular and for-cause basis  
6 to identify suspicious drug orders."

7 Do you see that?

8 A. I do.

9 Q. Was that something that was in effect in  
10 2009 going forward?

11 A. Yes.

12 Q. And were suspicious orders blocked and  
13 reported to the appropriate regulatory authority  
14 within the timeframe set out in the policy?

15 MR. HUDSON: Object to the form.

16 THE WITNESS: I can't say that there  
17 were any that were specifically blocked.

18 BY MR. BARNES:

19 Q. But does this memorialize a preexisting  
20 policy?

21 A. Yes.

22 Q. Do you know, one way or the other, if an  
23 order was flagged as suspicious or as an order of  
24 interest to a pharmacy, would the order be held or  
25 would it be shipped to the pharmacy?



1 A. Again, getting rusty, but yes.

2 Q. What is the main purpose of the security  
3 requirement, in your understanding?

4 MR. HUDSON: Object to the form. Lack  
5 of foundation.

6 BY MR. BARNES:

7 Q. What does it require?

8 A. Theft diversion and suspicious order.

9 Q. And do you know whether or not  
10 compliance with that regulation is something that  
11 is dependent upon the specific facts of each  
12 specific distributor?

13 MR. HUDSON: Object to the form.

14 THE WITNESS: I would say yes.

15 BY MR. BARNES:

16 Q. In working with the DEA and during their  
17 multiple inspections before, during, and after the  
18 HBC narcotics room was set up or any of their  
19 surprise audits, did they at any time ever give  
20 you any indication that HBC was not in full  
21 compliance with the security requirement?

22 A. No, they did not.

23 MR. HUDSON: Object to the form.

24 BY MR. BARNES:

25 Q. What is your understanding of whether or

1 investigations discussed?

2 A. No.

3 Q. One of the things you were asked about  
4 is your opinion of whether or not there could be  
5 suspicious orders in the system that Giant Eagle  
6 and HBC had.

7 Do you remember those questions by HBC's  
8 counsel?

9 A. I do.

10 Q. What is your idea or your understanding  
11 of what a suspicious order is?

12 A. It's my own personal view of it.  
13 Anything that's not in the quantities or in the  
14 format that it was intended to be. Meaning a  
15 store called for two units and discovered that it  
16 only got one.

17 In itself, that becomes suspect and requires  
18 investigation.

19 Q. Any other examples you can come up with  
20 of suspicious orders?

21 A. Not specifically.

22 Q. So are you aware of any time when, at  
23 HBC, the inventory counts were off?

24 A. Again, not specifically. But I've got  
25 to believe through the course of our operation,

1       there would have been a time where the inventory  
2       would have been off.

3           Q.    And in that situation, would that be a  
4       potential risk for diversion?

5           A.    No.  I don't believe so.  Again, because  
6       of the close circuit or the -- how will I say  
7       it -- the fact that we were distributing to  
8       ourselves, you know, the next stop or step would  
9       have been that it would have gone to a pharmacy,  
10      and there were checks and balances at the  
11      pharmacy.

12           So there's a lot of layers that it would have  
13      to go through.

14           Q.    If a picker went and just went in and  
15      took an item and then bar-coded it as if it had  
16      or -- in other words, found out some way to -- by  
17      the way, was there ever any theft, that you're  
18      aware of, that ever occurred at the HBC facility?

19           A.    Yes.

20           Q.    Approximately how many times?

21           A.    One.

22           Q.    And when did that happen?

23           A.    I got to believe it was 2012.

24           Q.    Was that a picker or selector?

25           A.    No.

1 Q. Who was that?

2 A. It was one of the managers.

3 Q. What was his or her name?

4 A. Andy Zelaski.

5 Q. Andy Zelaski was caught stealing?

6 A. Yes.

7 Q. Was it controlled substances?

8 A. I don't know the form that -- of whether  
9 it was or not. I don't believe it was.

10 Q. But he was caught stealing narcotics?

11 A. No. I don't believe it was.

12 Q. What was he caught stealing?

13 A. It was Viagra.

14 Q. Viagra?

15 A. Yes.

16 Q. And that was a manager?

17 A. Yes.

18 Q. How long had that been going on?

19 A. It happened one time, and he was  
20 immediately caught by our systems.

21 Q. Okay.

22 A. Christy caught it through the counts and  
23 immediately reported him.

24 Q. Do you see, in your mind, a connection  
25 between the security requirements or the inventory

1 count issues and monitoring for suspicious orders  
2 of controlled substances?

3 MR. BARNES: Object to the form.

4 THE WITNESS: I'm not sure I'm following  
5 you on that.

6 BY MR. HUDSON:

7 Q. Well, making sure the inventory count is  
8 right is one of the things you've talked about a  
9 lot today; right?

10 A. Correct.

11 Q. But the inventory count can still be  
12 right, but you could have a suspicious order;  
13 correct?

14 MR. BARNES: Object to form.

15 BY MR. HUDSON:

16 Q. Let me try it this way.

17 A. I would say yes, but through our systems  
18 it would still be caught.

19 So if my inventory is correct, the checks and  
20 balances on the other side of our closed loop at  
21 the pharmacies would detect it. As soon as they  
22 would detect it, because they're checking that  
23 inbound order specific to each unit, sell unit,  
24 they would call back to us and say, Guys, I was  
25 supposed to get two. I got one.